

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-1 SHAWN GIBSON,

Defendant.

Criminal Case No. 08-20390

Civil Case No. 09-13164

HONORABLE DENISE PAGE HOOD

ORDER GRANTING MOTION TO CORRECT JUDGMENT

Before the Court is Defendant's Motion to Correct Judgment, filed on March 3, 2009. On July 22, 2008, Defendant pled guilty to Count II of the Indictment, aiding and assisting in the preparation and presentation of a false and fraudulent tax return in violation of 26 U.S.C. § 7206(2). The Defendant was sentenced on December 18, 2008. This Court sentenced Defendant to thirty (30) months imprisonment. The Court further ordered that three (3) months of Defendant's sentence "shall run concurrent with the previous sentence the Defendant is serving in case no. 06-20351-01. The balance of this sentence shall run consecutive to the present sentence the Defendant is serving. The Defendant is to receive six (6) months credit for time served on this offense." *See* Judg. at 3.

Defendant's counsel submits that he has been in contact with the Designation and Sentencing Calculation Center in the Bureau of Prisons ("BOP") and has been informed that the BOP will not follow the provision in the Judgment which provides for "six (6) months credit time" because Defendant is already serving a federal sentence and getting credit for time served on the first federal sentence. *See* Def.'s Mot. at 1-2. Defendant seeks an order from this Court amending the Judgment to read at page four, "24 months. Three (3) months of this sentence shall run concurrent with the

previous sentence the defendant is serving in case number 06-20351. The balance of this sentence shall run consecutive to the present sentence the defendant is serving.” *See* Def.’s Mot. at 3.

The parties and the BOP agree this is a clerical error that can be corrected by crediting the six months by allowing that time to run concurrent with Defendant’s sentence on case number 06-20351.¹ The Court notes that the Attorney General through the Bureau of Prisons, not the district court, has the authority to grant credit for any time served. *United States v. Wilson*, 503 U.S. 329, 335 (1992); *United States v. Cozier*, 259 F. 3d 503, 520 (6th Cir. 2001).

A clerical error in a judgment can be corrected at any time after giving notice the court considers appropriate. *See* Fed. R. Crim. P. 36. The Court finds clerical error and amends the judgment to read “[t]he Defendant shall serve nine months (9) of this 30 month sentence concurrent with the sentence imposed in Case No. 06-20351. The balance of this sentence, twenty-one (21) months, shall run consecutive to the sentence imposed in Case No. 06-20351.” *See* Am. Judg. at 3.

Accordingly,

IT IS ORDERED that Defendant’s Motion to Correct Judgment (Case No. 08-20390) [**Docket No. 14, filed on March 3, 2009**] is GRANTED.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendant in civil action number 09-13164.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: January 27, 2010

¹ A Stipulation and Order was filed by the parties wherein the parties agreed to amend the judgment and that Mr. Gibson’s section 2255 case should be dismissed. The Court declines to enter this Stipulation and Order, finding it unnecessary in light of the present Order.

I hereby certify that a copy of the foregoing document was served upon Shawn Gibson, Reg. No. 40647-039, Milan Federal Correctional Institution, P. O. Box 1000, Milan, Michigan 48160 and counsel of record on January 27, 2010, by electronic and/or ordinary mail.

S/William F. Lewis

Case Manager